APPENDIX B

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Adoption Equity No. 3087

EX PARTE:

In the Matter of the Petition of

HANS-OLA TORESSON MALMSTEDT

for the Adoption of a Minor

Judge Anderson's Decision*

In arriving at a decision in this case the Court has carefully considered both the law and the evidence, and, in addition, has had the advantage of a very complete adoptive investigation, made by the Probation Department of this Court.

After carefully considering the law as laid down in the Adoption Statute and in the Maryland Rules, and considering the evidence from the witness stand of the various witnesses who testified in this case, the Court is of the opinion, and so finds, that the Petition for Adoption must be denied and the case dismissed.

In fairness to all parties, I feel that I should point out the reasons which prompt me to come to this conclusion.

In this case the Petitioner is a young man, twenty-two years of age, or will be twenty-two in October. He is unmarried and he seeks to adopt his illegitimate child, born out of wedlock. The mother of the child has refused to

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* At the conclusion of the adoption hearing held September 10, 1965, Judge Anderson announced his decision orally from the bench. The original transcript of the decision was subsequently revised by Judge Anderson; and, on October 20, 1965, a corrected transcript was filed substituting his final decision hereinabove set forth as Exhibit B. Through an oversight, the record extract of trial court proceedings contains the original decision announced from the bench (E. 91-94), rather than the final decision.

give her consent for the adoption, and has made other plans for the adoption of the child, and has placed the child with the Church Mission of Help of the Diocese of Maryland, Incorporated, a responsible and reliable institution of this State, which bears an excellent reputation.

The Court might point out that it would be impossible for the natural father of this child, who is the Petitioner in this case, to adopt the child and expect to support her. He would have no means of taking care of the child himself. He is only twenty-two years old. He is presently employed, but he is a student at the University of New Hampshire and plans to return there in the spring. He is presently self-supporting, but has no funds with which, even at the present time, to support her, and the testimony has been that his mother and father would support the child and have custody of her. Consequently, if the Court should grant the Petition, what the Court would be doing, in essence, would be to grant his mother the actual adoption of the child. Now, if anything should happen to his mother, or his father, and his father is in the Merchant Marine, and away a great deal, he would be in no position to care for the child, and the Court must look to what is for the best interest of the child.

I might point out that the natural father, who is the petitioner in this case, has never seen this child. He doesn't know what the child looks like. He just knows he has had a child. His mother, the grandmother of the child, has never seen the child. They know there is a child, but it would be a far different situation if they had had custody of the child since the child was born, or the child had been in their custody for some time and now they would be deprived of that custody, but that is not true in this case.

Turning to the legal side, the consent of the mother is an absolute necessity, unless the Court finds that the consent was withheld contrary to the best interest of the child.

In the case of Shetler v. Fink, 231 Md. 302, 190 Atl. (2nd) 76; the Court there, in essence, stated, referring to

Section 74 of Article 16 of the Maryland Code and the Maryland Rule D73, that the present statute and Rule contemplated that a Decree of Adoption shall not be granted until a signed and verified statement of consent has been filed in the adoption proceeding, unless the Court shall have found after hearing that the required consent had been improperly withheld.

In the same case the Court, in essence, stated that wilful abandonment, failure to contribute to support, neglect to see or visit, and the unfitness of a natural parent, are some of the important factors to be considered in determining whether consent has been unjustifiably withheld; and that station in life, financial and religious considerations, are of secondary importance.

It would appear to the Court that the mother of this child gave careful consideration as to what she was going to do with the child, and what would be for the best interest of this child, before she placed the child with the Church Mission of Help of the Diocese of Maryland, Inc., with the intention that they should be granted guardianship, with the right to adoption, and it was her considered judgment that it would be best for all parties concerned that this child be adopted by a responsible, as she stated, "young couple" who could give it love and affection and raise it as their own child while it is quite young rather than have the child know the father and know that the mother had determined that she did not want to keep her, that she had been turned over by the Court to the father because the mother did not want the child.

I realize that this is a case that has caused the natural father, the petitioner in this case, a great amount of heartache and his mother, too, but I can only come to the conclusion I have come to, as disagreeable as it may be to the Petitioner and his parents, that the Petition should be denied and the case dismissed.

I will file the investigative report in the case and it will be a part of the proceedings, and I will sign a decree in accordance with what I have said.